

Summary: The parties filed numerous motions to exclude the testimony of expert witnesses. The Court denied the motions, finding that the expert witnesses disclosed by the parties are all qualified by background, education, training, knowledge, or experience to render opinions at trial.

Case Name: Stroklund, et al. v. Thompson/Center Arms Company, Inc., et al.

Case Number: 4-06-cv-08

Docket Number: 247

Date Filed: 1/2/08

Nature of Suit: 365

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Clinton “Pete” Stroklund and Rebecca)
“Becky” Stroklund,)

Plaintiffs,)

vs.)

Thompson/Center Arms Company, Inc.,)
Blackpowder Shooting Sports, Inc., and)
Clean Shot Technologies, Inc.,)

Defendants.)

**ORDER DENYING MOTIONS
IN LIMINE (EXPERT WITNESSES)**

Case No: 4-06-cv-008

Before the Court are the Plaintiffs’ motions in limine to exclude the testimony of the Defendants’ expert witnesses Sam Fadala, Ronald Fazio, and Richard Post, filed on November 26, 2007. See Docket Nos. 182, 188, and 191. Fadala has been disclosed as a failure analysis expert by Thompson/Center Arms Company, Inc. Fazio is a forensic expert retained by defendant Clean Shot Technologies, Inc. Post was retained by Blackpowder Shooting Sports, Inc. as a firearms and ballistics expert. Also before the Court are the Defendants’ motions to exclude the testimony of the Plaintiffs’ expert witness Charles Powell, and Thompson/Center Arms Company, Inc.’s motion to exclude the testimony of the Plaintiffs’ expert witness Dr. Paul Estenson. See Docket Nos. 164, 178,

202, and 180. The Plaintiffs retained Charles Powell as a materials failure expert and Dr. Estenson as an economist to present testimony on damages. Each party essentially contends that the proffered testimony of each challenged expert does not meet the standards established by Federal Rules of Evidence 104, 401, 402, 403, and 702, and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). For the reasons set forth below, the Court denies all of the motions.

I. BACKGROUND OF THE CASE

This dispute arises out of an explosion of a muzzleloader rifle on December 4, 2004. The explosion caused injuries to, and the subsequent amputation of, the left hand of the plaintiff, Clinton “Pete” Stroklund. On February 2, 2006, Pete and Rebecca “Becky” Stroklund filed a complaint against Thompson/Center Arms Company, Inc. (Thompson/Center Arms), the manufacturer of the rifle; Clean Shot Technologies, Inc. (Clean Shot), the manufacturer of the gunpowder used in the rifle on December 4, 2004; and Blackpowder Shooting Sports, Inc. (Blackpowder), the manufacturer of the bullet used in the rifle on December 4, 2004. The claims asserted against each of the Defendants are: (1) negligence; (2) strict products liability; (3) failure to warn; and (4) breach of warranty.

The parties agree that the following facts are not in dispute. In April of 2002, Pete Stroklund received a .54 caliber muzzleloader rifle for his birthday. Although it is disputed whether the barrel of the rifle was manufactured by Thompson/Center Arms, it is undisputed that the rifle Pete Stroklund received was a used .54 caliber Renegade model blackpowder muzzleloader rifle manufactured by Thompson/Center Arms and purchased at Scheels Sports in Minot, North Dakota. From the time he received the rifle as a gift to the day of the barrel explosion, Pete Stroklund

estimated that he had shot the rifle more than thirty (30) times without incident and that he had always used 348-grain copper plated aerotip PowerBelt brand bullets designed and manufactured by Blackpowder.

On December 3, 2004, Pete Stroklund, while deer hunting, loaded the rifle with Clean Shot gunpowder and one 348-grain Powerbelt bullet. Stroklund reloaded the rifle after he shot a deer, but did not fire the rifle again that day. Stroklund placed the loaded rifle in his truck and left it there overnight. On December 4, 2004, the barrel of the rifle exploded when Stroklund attempted to unload it by discharging the rifle into an open field.

II. LEGAL DISCUSSION

Rule 702 of the Federal Rules of Evidence sets forth the standard for expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 702 requires that the trial judge act as a “gatekeeper,” admitting expert testimony only if it is both relevant and reliable. See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 589 (1993). The trial court is given broad discretion in its determination of reliability. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 142 (1999); Olson v. Ford Motor Co., 481 F.3d 619, 626 (8th Cir. 2007). However, the trial judge, as gatekeeper, should not invade the jury’s role of deciding issues of credibility and determining the weight to be accorded such evidence. See Arkwright Mut. Ins. Co. v. Gwinner Oil Co., 125 F.3d 1176, 1183 (8th Cir. 1997).

The Eighth Circuit Court of Appeals has established three prerequisites that must be satisfied for expert testimony to be admitted under Rule 702:

First, evidence based on scientific, technical, or other specialized knowledge must be useful to the finder of fact in deciding the ultimate issue of fact. This is the basic rule of relevancy. Second, the proposed witness must be qualified to assist the finder of fact. Third, ‘the proposed evidence must be reliable or trustworthy in an evidentiary sense, so that, if the finder of fact accepts it as true, it provides the assistance the finder of fact requires’

Lauzon v. Senco Products, Inc., 270 F.3d 681, 686 (8th Cir. 2001) (internal citations omitted) (quoting 4 Jack B. Weinstein & Margaret A. Berger, Weinstein’s Federal Evidence § 702.02[3] (2001)).

In the well-known case of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), the United States Supreme Court held that the “general acceptance” standard articulated in Frye v. United States, 293 F. 1013 (D.C. 1923), was “not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence – especially Rule 702 – do assign to the trial judge the task of ensuring that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” Daubert, 509 U.S. at 597. The Supreme Court has also held that the principles set forth in Daubert apply to all expert testimony. Kumho Tire, 526 U.S. at 141 (“We conclude that Daubert’s general holding – setting forth the trial judge’s general ‘gatekeeping’ obligation – applies not only to testimony based on ‘scientific’ knowledge, but also to testimony based on ‘technical’ and ‘other specialized’ knowledge.”); accord Jaurequi v. Carter Mfg. Co., 173 F.3d 1076, 1082 (8th Cir. 1999).

The motions, briefs, responsive pleadings, exhibits, and depositions offered in support of the parties’ respective positions are voluminous. The Court will address each of the motions.

A. SAM FADALA

Sam Fadala is an expert witness retained by Thompson/Center Arms to testify about the cause of the explosion of the muzzleloader barrel. The Plaintiffs filed a motion to exclude the testimony of Sam Fadala on November 26, 2007. See Docket No. 182. Thompson/Center Arms filed a response opposing the motion on December 19, 2007. See Docket No. 232. The Plaintiffs argue that Fadala is not qualified to offer expert testimony regarding the cause of the muzzleloader barrel failure because he lacks the requisite education and experience. The Plaintiffs further argue that Fadala's testimony should be excluded because it is not reliable and trustworthy, it is not based on reliable scientific methodologies, and it is not tied to the facts of this case.

The Plaintiffs contend that Fadala is not qualified to testify as an expert because he is a writer, hunter, and muzzleloading enthusiast, and not a scientist, metallurgist, or materials engineer. It is well-established that an individual may be qualified to offer expert testimony based on experience. See Kumho Tire, 526 U.S. at 148 (stating that "no one denies that an expert might draw a conclusion from a set of observations based on extensive and specialized experience").

Thompson/Center Arms contends that Fadala's more than thirty years of use, testing (including destructive testing), evaluation and analysis of muzzleloaders and muzzleloading components qualify him to testify as an expert witness. Fadala admits that he is not a metallurgist, but states that his opinions are based on thirty years of experience as a shooter and upon the vast number of muzzleloader tests he has performed in the past. See Deposition of Sam Fadala, Docket No. 232-3, p. 65. Thompson/Center Arms notes that Fadala's experience includes having authored approximately 30 books and over 4,000 articles on muzzleloading, including several top selling manuals and guides. As part of his writing on muzzleloading, Fadala has conducted numerous tests

on the failure of muzzleloaders, including barrel rupture tests that were conducted over a two year period. See Docket No. 232-7, p. 7.

After a careful review of the relevant case law and record, including Fadala's report, deposition, and related pleadings, the Court finds that Sam Fadala has the experience and background necessary to provide expert testimony as to the possible cause of the barrel explosion, and that he is qualified to assist the jury about the ultimate issues of fact.

The Plaintiffs argue that even if Fadala is qualified to testify, his proposed testimony is not reliable or trustworthy because it is not based on reliable scientific methodology and it is not sufficiently tied to the facts of this case. The Plaintiffs argue that Fadala's opinion that the barrel ruptured as a result of a "short start" is based on pure speculation, and that Fadala did not conduct scientific analysis in reaching his opinion. Thompson/Center Arms argues that Fadala's opinions are based on his experience in loading and shooting all types of muzzleloading firearms, researching and investigating the various causes of muzzleloading firearm failures, and his knowledge of various designs and uses of muzzleloaders. See "Initial Report" of Sam Fadala, Docket No. 187-2, p. 1. Fadala's report provides alternative failure causes based on his observations of Pete Stroklund's ruptured barrel compared to fragments of barrels Fadala has ruptured in the past, and on facts contained in the record coupled with his years of study and experimentation regarding the operation and failure of muzzleloader barrels.

The Court finds that Fadala's proposed opinion testimony concerning possible causes for the explosion of the barrel, and his opinion that the physical evidence may be consistent with a "short start," satisfies the requirements of Rule 702 and Daubert. This type of expert opinion testimony

would be of assistance to the trier of fact and Fadala is qualified to render such opinions based upon his knowledge, background, and experience.

B. RONALD FAZIO

The Plaintiffs have moved to exclude the opinions of Ronald Fazio who was retained by Clean Shot as a forensics expert. Clean Shot filed a response in opposition on December 10, 2007, and the Plaintiffs filed a reply on December 17, 2007. See Docket Nos. 219 and 230. The Plaintiffs contend that Fazio should not be permitted to render an opinion as to the cause of the barrel rupture because he is not qualified to offer expert testimony and because his opinions are not based on sound methodologies.

Fazio has an undergraduate degree in biology and a masters in business administration. See Affidavit of Ronald Fazio, Docket No. 220, ¶ 5. Fazio has completed undergraduate and graduate level course work in engineering, science, and forensic science, as well as individual course work in laboratory analysis, materials analysis and engineering, and physical characterization. Id. Additionally, Fazio was professionally trained in firearms functioning and inspection while a combat engineer in the United States Army Reserves, is certified in forensic firearms examination and identification from the Association of Firearms and Toolmarks Examiners, and is board certified in forensic science by the American Board of Criminalistics. Id. at ¶¶ 6-7.

Fazio has opined that the barrel explosion was the result of a barrel obstruction caused by an object that was harder than gun metal. The Plaintiffs argue that Fazio's conclusion is based on unsupported methodology and that Fazio reached his conclusion by merely examining the exploded

barrel and noting scratches on the barrel bore. Clean Shot contends that Fazio's opinions are based on his inspection of the forward portion of the rifle bore with a bore scope and his macroscopic and microscopic examination of cut pieces from a cross-section of the muzzle, both revealing significant striae¹ inconsistent with normal wear and tear. See Docket No. 204, pp. 3-4. Fazio also examined the breach, breach plug, hammer, and side plates of the rifle, and observed that the flash hole had received a significant amount of burning and corrosion, and that the nipple was missing.

In conducting his examination, Fazio observed significant striae and photomicrographed filamentous metal shavings along the deepest striae. Clean Shot contends that Fazio's conclusion that the obstruction was harder than the gun metal is based on the principle that when a harder object (the tool) comes in contact with the softer object (the work piece), the harder object will impart its marks or features on the softer object. Fazio's methodology is based on Toolmark and Firearms Identification and Comparison protocols that are based on well-established controls and procedures. See Affidavit of Ronald Fazio, Docket No. 220, ¶ 18. Fazio also opined that several of the tests on the Clean Shot gunpowder performed by the Plaintiffs' expert, Charles Powell, were not performed according to the established standard and that other data relied on by Powell contained errors.

The Court finds that Ronald Fazio is qualified by his background, education, training, and experience, and he has certain technical or specialized knowledge that will assist the jury in understanding the cause of the explosion of the rifle barrel. The proposed expert opinion testimony is relevant and reliable for purposes of Daubert and Rule 702. Fazio has provided a summary of his opinions and a detailed explanation as to the factual basis for his opinions. Having found that Fazio is qualified and his opinion testimony is relevant and reliable, the Court will allow Fazio to provide

¹ Striae are grooves/scratches that are typically parallel to one another.

his opinion on the cause(s) of the barrel explosion and his opinion on any perceived deficiencies in Charles Powell's tests and opinions. The appropriate means of attacking an expert witness's opinions is through vigorous cross-examination and the presentation of contrary evidence, rather than a wholesale exclusion of such testimony at trial.

C. RICHARD POST

Richard Post was retained by Blackpowder as a firearms and ballistics expert. On November 26, 2007, the Plaintiffs filed a motion to exclude the testimony of Post, and on December 5, 2007, Blackpowder filed a response in opposition to the motion. See Docket Nos. 191 and 218.

The Plaintiffs first argue that some of Post's opinions provided in his expert report attempt to introduce fact testimony that is not properly the subject of expert testimony. Blackpowder agrees that what is labeled as Post's first three opinions in his written report are not Post's expert opinions but rather a portion of the information that Post reviewed and relied upon in formulating his opinions. As such, Blackpowder agrees that what is labeled as Post's first three opinions will not be introduced as expert opinion testimony. See "Firearms and Ballistic Investigation" report of Richard Post, Docket No. 193-6, p. 10.

The Plaintiffs contend that Post should be excluded from testifying as an expert witness because he is not qualified and his testimony and opinions are not based on sufficient data or reliable methodology. The record reveals that Post has more than thirty years of experience as a gun maker and gunsmithing instructor, and has worked as a forensic firearms and ballistics expert since 1978. See Docket No. 193-3, p. 2. Post is the president of Firearms Technologies, Inc., a company that performs research and development in the areas of cartridge design, specifically the manufacturing

process of the projectile core to the jacket, design of the cartridge case primarily for internal propellant capacity, as well as barrel dynamics and dimensions for special use by the military and law enforcement communities. Post's work as a gunsmith has included work on muzzleloaders, and particularly muzzleloaders manufactured by Thompson/Center Arms. See Deposition of Richard Post, Docket No. 218-2, pp. 35-36. Although Post has not previously testified in burst barrel cases involving a muzzleloader, he has previously testified as to causation on burst barrel cases relating to a grenade launcher and a shotgun. See Deposition of Post, Docket No. 218-2, pp. 106-108, 130.

Post conducted an examination of the Powerbelt bullets, analyzed the data as to the manufacture of the bullets, examined Pete Stroklund's exploded rifle, as well as other muzzleloader guns, and participated in the joint examination and testing of the rifle at McCrone Laboratories. From his analysis and examination of the Powerbelt bullets at issue in this case, Post has opined that the copper plating did not render the bullets rigid and that the bullets conform "to that of match grade, competition only, special use type ammunition components." See "Firearms and Ballistics Investigation" report of Richard Post, Docket No. 193-6, pp. 8-9.

The Court believes that Richard Post has the necessary background, training, education, and experience necessary to provide expert witness testimony as to the possible cause of this accident. Post is qualified to assist the jury about the ultimate issues of fact. The Court finds that Post's opinions are reliable and relevant for purposes of Rule 702. The proper means of attacking such evidence is through vigorous cross-examination and the presentation of contrary evidence. The Court will not invade the province of the jury whose job it is to decide issues of credibility and determine the weight to be accorded such evidence. The United States Supreme Court emphasized in Daubert, 509 U.S. at 595-596, that "[v]igorous cross-examination, presentation of contrary

evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” See Olson v. Ford Motor Co., 481 F.3d 619, 626 (8th Cir. 2007).

D. CHARLES POWELL

Charles Powell is a registered professional engineer retained by the Plaintiffs to investigate the barrel explosion and its causes. See Docket Nos. 169, 225, and 226. Powell has been engaged in materials failure analysis for thirty years. His current professional activities include product evaluation, materials selection, and design improvement as applied to industrial processes and consumer products; analysis of physical metallurgical aspects of material failures; and application of advanced nondestructive evaluation techniques for product in-service reliability, structural integrity, and component design. See SSEC Engineering Report of Charles Powell, Docket No. 121-2, p. 17.

Charles Powell examined and analyzed fractured components of the rifle that were recovered from the scene of the explosion. Powell conducted measurements of the rifle, exemplar rifles, exemplar PowerBelt bullets, and exemplar amounts of gunpowder. Further, Powell measured the pressure of fired rifle barrels, conducted barrel loading measurements, and conducted sieve analysis of gunpowder grains. As a result of his testing, Powell concluded that the barrel explosion was created by high pressure within the breech half of the barrel when the rifle was fired. Powell concluded that the failure pressure was created by defects in the Thompson/Center Arms rifle, defects in the Clean Shot gunpowder, and defects in the Blackpowder bullet. Powell opined that the rifle was defective in manufacture and design because it was above the hardness range called for in

Thompson/Center Arms' specifications, it had an undersized bore, it was not made of the proper alloy steel, and there was a lack of testing conducted by Thompson/Center Arms. Powell also opined that the gunpowder was defective in design because it degraded, producing granules that varied in size and chemical constituents. See Docket No. 164-10, pp. 94, 98. Powell opined that the bullet was defective in design because the design of its copper coating and polymer skirt led to an increase in barrel pressure. See SSEC Report of Powell, Docket No. 121-2 at 8-9.

Thompson/Center Arms, Clean Shot, and Blackpowder have moved to exclude the expert testimony of Charles Powell at trial. The crux of the Defendants' arguments is that Powell's opinions are outside the scope of his expertise, are not based on reliable scientific principles, and will not assist the trier of fact.

The Defendants' primary contention is that Powell is unqualified. Blackpowder contends that Powell never participated in the design or manufacture of a bullet, never electroplated a bullet, and has never published any articles on bullet design. Clean Shot contends that Powell has not previously testified about defects in blackpowder or smokeless powder, and generally lacks experience with gun powder.

The Defendants also contend that Powell's opinions are unreliable. Thompson/Center Arms argues that Powell's opinions are unreliable because the foundation and methodology used to reach his conclusion about a defect in the rifle barrel are unreliable; Powell cannot reasonably conclude that if the barrel had been made of a different material it would have withstood the failure; and he has not provided a reliable explanation as to why there was increased pressure in the barrel. Blackpowder argues that Powell's opinions are unreliable because his opinion that the copper plating of the PowerBelt bullet results in higher barrel pressure is without scientific or technical support;

Powell does not know the pressure at which the barrel failed; and Powell's electroplating expertise was developed for litigation. Clean Shot contends that Powell's opinions are unreliable because he did not properly perform sieve analysis; his opinions about Clean Shot's quality control and manufacturing techniques are unreliable; and his theory has not been tested, has not been subjected to peer review, and has not gained general acceptance.

The Plaintiffs argue that Powell is qualified to testify as an expert witness at trial, that his testimony is reliable, and that his testimony will assist the jury. The Plaintiffs assert that Powell has nearly thirty years of experience in failure analysis and accident investigation, is a registered professional engineer, and was educated in metallurgical engineering. The Plaintiffs further assert that Powell has been trained in advanced non-destructive evaluation techniques, has taught non-destructive testing principles and material defect identification, and has performed engineering and failure investigation projects for multiple government agencies. Therefore, the Plaintiffs argue that based on Powell's extensive education and experience, his methodology of testing for defects in the rifle, gunpowder, and bullet is reliable.

After a thorough review of Powell's report, deposition, and the briefs and exhibits in this case, the Court believes that Charles Powell has the necessary background, training, education, and experience necessary to testify as to the cause(s) of the barrel explosion. Powell is qualified to assist the jury in understanding the ultimate issues of fact. The Court finds that Powell's opinions are reliable and relevant for the purposes of Rule 702. The proper means of attacking such evidence is through vigorous cross-examination and the presentation of contrary evidence. The Court will not invade the province of the jury which is given the task of deciding issues of credibility and determining the weight to be accorded such evidence.

E. DR. PAUL ESTENSON

Dr. Paul Estenson is an economist retained by the Plaintiffs to provide expert testimony on Pete Stroklund's economic losses and loss of future earning capacity. See Docket No. 215. On November 23, 2007, Thompson/Center Arms moved to exclude the testimony of Dr. Estenson. See Docket No. 180. On December 4, 2007, the Plaintiffs filed a response in opposition to the motion. See Docket No. 215. Thompson/Center Arms filed a reply on December 11, 2007. See Docket No. 224. Thompson/Center Arms challenges the reliability of Dr. Estenson's testimony and contends that Dr. Estenson's testimony is not outside the knowledge of the typical juror.

Dr. Estenson earned a Ph.D in economics in 1987. See Docket No. 215-3. Since 1986, Dr. Estenson has been a professor of economics at Gustavus Adolphus College where he has taught principles of economics, macroeconomic analysis, financial markets and institutions, econometrics, and statistics. In addition to his work as a professor, Dr. Estenson has published and presented papers on economics.

In preparing his written report in this case, Dr. Estenson reviewed information from Pete Stroklund's employer, labor cost information from Stroklund's union, a worksheet for economic loss completed by Pete Stroklund, a permanent partial impairment evaluation, billing and health records, and the Stroklunds' tax returns from 2001 to 2005. See Docket No. 215. Based upon this information, Dr. Estenson determined the present value of Pete Stroklund's lost earning capacity. Dr. Estenson has concluded that Stroklund's loss of earning capacity for a moderate disability would be \$196,362.43 and for a severe disability the economic loss would be \$418,617.43. The Plaintiffs

argue that Dr. Estenson's opinions are based on sufficient and reliable information and accepted principles of economics, and that his opinion will assist the jury in determining the loss of Pete Stroklund's future earning capacity.

After a thorough review of Dr. Estenson's report, deposition, and the briefs and exhibits in this case, the Court believes that Dr. Paul Estenson has the necessary background, training, education, and experience necessary to testify as to the economic damages sustained by the Plaintiff. Dr. Estenson is qualified to assist the jury in understanding the ultimate issues of fact. The Court finds that Dr. Estenson's opinions are reliable and relevant for the purposes of Rule 702.

III. CONCLUSION

In summary, the opinions of Sam Fadala, Ronald Fazio, Richard Post, Charles Powell, and Dr. Paul Estenson are relevant, reliable, and admissible at trial. It is well-established that neither Rule 702 nor the mandate of the United States Supreme Court in Daubert permit a district court to invade the province of the jury. As was noted by the Eighth Circuit in Olson v. Ford Motor Co., 481 F.3d 619, 626 (8th Cir. 2007):

Neither Rule 702 nor Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) (the seminal case interpreting Rule 702) permits a district court to invade the province of the jury. Rule 702 does not permit a judge to weigh conflicting expert testimony, admit the testimony that he or she personally believes, and exclude the testimony that he or she does not personally believe. Nor does Rule 702 permit a judge to exclude expert testimony just because it seems doubtful or tenuous. The Supreme Court has been clear about how infirmities in expert testimony should be exposed: 'Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.' Daubert, 509 U.S. at 596, 113 S. Ct. 2786.

Rule 702 does not permit a judge to simply exclude expert testimony because it may seem doubtful or tenuous. The appropriate method to attack the opinions of an expert witness is through vigorous cross-examination and the presentation of contrary evidence at trial. The Court's gatekeeper role mandates that it not invade the province of the jury which is given the task of deciding issues of credibility and determining the weight to be accorded such evidence. The adversary system is designed to allow the jury to weigh contradictory evidence and decide which evidence to believe. The expert witnesses disclosed by the parties are all qualified by background, education, training, knowledge, or experience to render opinions at trial. The proffered expert testimony, in the Court's discretion, is relevant, reliable, and admissible.²

The Court **DENIES** the Plaintiffs' motions in limine to exclude Sam Fadala, Ronald Fazio, and Richard Post as expert witnesses. See Docket Nos. 182, 188, and 191. The Court **DENIES** Thompson Center Arms', Clean Shot Technology's, and Blackpowder Shooting Sport's motions to exclude Charles Powell as an expert witness. See Docket Nos. 164, 178, and 202. The Court **DENIES** Thompson/Center Arms' motion to exclude Dr. Paul Estenson as an expert witness. See Docket No. 180.

IT IS SO ORDERED.

Dated this 2nd day of January, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court

² On December 20, 2007, counsel for the Plaintiffs filed a letter notifying defense counsel of its intent to call Dr. Benjamin Carter Hamilton as a "rebuttal" expert witness. See Docket No. 235. This order does not address the admissibility of any rebuttal testimony.